IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.72 OF 2007
IN
SUMMARY SUIT NO. 3297 OF 2006

M/s. V.P. & Brothers. ... Plaintiffs.

V/s.

M/s. P.N.R. Spinning Mills Pvt.Ltd. ...Defendant.

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Mr. H.D. Mehta i/b. Dhruve Liladhar & Co. for the Plaintiffs.
Mr. Harvindersingh Toor i/b. N.M. Amin & Co. for the Defendant.

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CORAM : DR. D.Y.CHANDRACHUD,J.

03rd April 2007.

P.C. :

. At the hearing of the Summons for Judgment, an objection was raised to the Jurisdiction of this Court to entertain and try the Suit, with regard to the provisions of Clause 12 of the Letters Patent. The goods in the present case were supplied by the Plaintiff from the State of Gujarat to the Defendant in the State of Tamil Nadu. In **Food Corporation of India V/s. Evdomen Corporation** (1999) 2 SCC 446, the Supreme Court has held that

under Section 120 of the Code of Civil Procedure, 1908, Sections 16, 17 and 20 of the Code do not apply to the High Court in exercise of the original civil jurisdiction. In that context, the Supreme Court held as follows :-

> " Jurisdiction of the Bombay High Court to entertain a suit under its ordinary original civil jurisdiction is determined by clause 12 of the Letters Patent of the Bombay High Court. Under clause 12 of the Letters Patent, a place where the defendant, or each of the defendants where there are more than one, at the commencement of the suit, carry on business would be a place where the court would have jurisdiction."

This judgment was subsequently followed in **Jindal Vijayanagar Steel (JSW Steel Ltd.) V/s. Jindal Praxair Oxygen Company Ltd. - JT 2006(8) SC 230.**

2. In the present case in paragraph 9 of the plaint it has not been averred that the Defendant carries on business within the jurisdiction of this Court. Leave under Clause 12 of the Letters Patent has not been obtained. In the circumstances, at the hearing of the Summons for Judgment, Counsel appearing on behalf of the Plaintiff has submitted that the plaint may be returned for presentation to the appropriate Court. This request is not opposed on behalf of the Defendant. The Plaint is accordingly returned to the Plaintiff for presentation before the appropriate Court.

3. The Summons for Judgment is in the circumstances dismissed as not pressed with liberty reserved to the Plaintiff to take out appropriate proceedings.